

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ELIZABETH PETERSON, AMANDA
CARLTON, REBECCA HIRSCH,
MICHELE O'DELL, and PRASANNA
RAMAKRISHNAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BSH HOME APPLIANCES
CORPORATION,

Defendant.

Case No. 2:23-cv-00543-RAJ

**ORDER GRANTING PLAINTIFFS'
UNOPPOSED MOTION AND
MEMORANDUM OF LAW IN
SUPPORT OF FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

1 This matter is before the Court on Plaintiffs’ Unopposed Motion and Memorandum of
2 Law in Support of Final Approval of Class Action Settlement. On January 25, 2024, the Court
3 granted Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement
4 between Plaintiffs Elizabeth Peterson, Amanda Carlton, Rebecca Hirsch, Michele O’Dell, and
5 Prasanna Ramakrishnan (“Plaintiffs” or “Class Representatives”) and Defendant BSH Home
6 Appliances Corporation (“Bosch” or “Defendant”). (Dkt. 23.)

7 On June 13, 2024, the Court held a Final Approval Hearing to determine whether the
8 Settlement should be fully approved as fair, reasonable, and adequate. The Court has
9 considered all the submissions and arguments of the Parties.

10 AND NOW, this 13th day of June, 2024, upon careful consideration of Plaintiffs’
11 Unopposed Motion and Memorandum of Law in Support of Final Approval of Class Action
12 Settlement, and having heard from the Parties at the Final Fairness Hearing held before this
13 Court on June 13, 2024, it is hereby **ORDERED** as follows:

14 **1. Definitions.**

15 This Order incorporates by reference the definitions in the Settlement Agreement (Dkt.
16 20-1), and all terms used in this Order shall have the same meanings as set forth in the
17 Settlement Agreement.

18 **2. Background.**

19 Plaintiffs, individually and on behalf of all others similarly situated, and Defendant
20 have entered into a class action Settlement Agreement to settle, fully and finally, all of the
21 claims that have been or could have been brought in the two putative class action Lawsuits
22 brought against Bosch relating to certain microwave/oven combination products. Specifically,
23 Bosch microwave and/or oven combination products with model numbers HBL5751UC,
24 HBL8751UC, HMC80151UC, HMC80251UC, and HMNC87151UC (the “Class Products” or
25 “Microwave/Ovens”) are equipped with vacuum fluorescent display (“VFD”) control panels
26 (“Control Panels”) which fade, dim, become unreadable, and/or fail altogether as a result of a
27 defect in the design and/or manufacture of the Class Products (“Display Failure”). According
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1 to Plaintiffs, extensive expert investigation conducted on their behalf revealed that the
2 Microwave/Ovens suffer from a uniform defect which causes the Display Failure and exists at
3 the point of sale such that the Microwave/Ovens cannot be used for their intended purpose of
4 safely and properly preparing meals at home. Thus, due to improper regulation of the current
5 related to the VFD, the displays of the Control Panels burn out in an accelerated manner,
6 leading to the display fading beyond any use (the “Defect”). Each Microwave/Oven contained
7 the Defect at the point of sale to Plaintiffs and utilized defective and outdated technology
8 which rendered the Microwave/Ovens unfit for their ordinary purpose for which they are used
9 and posed an unreasonable risk of harm to consumers and their property and were subject to
10 premature failure.

11 The Court finds the Settlement is the product of hard-fought litigation and arm’s-length
12 negotiations, as well as substantial investigation and litigation over the course of four years
13 including: (1) researching the complaints regarding the failed displays and cause of the failure,
14 potential causes of action, Defendant’s representations, qualities, and specifications regarding
15 the products, as well as the related complex legal and factual issues involved; (2) working with
16 a qualified electrical engineer for 10-months of pre-suit expert investigation that included
17 significant research on the products and industry standards, testing, and investigation of
18 alternative feasible designs; (3) communicating extensively with Plaintiffs and other
19 consumers to vet potential claims and understand the practical realities of the alleged Defect;
20 (4) briefing and overcoming formidable legal arguments in Defendant’s Motion to Dismiss;
21 (5) exchanging discovery, both formally and as part of settlement negotiations; (6) preparing
22 and serving third-party discovery on numerous retailers; (7) vigorously advocating on behalf
23 of Plaintiffs and the putative Class at mediation; and (8) continuing to work for an additional
24 year to negotiate and finalize the Settlement.

25 **3. Class Certification.**

26 **A. Settlement Class.**

27 When this Court granted preliminary approval, the Court preliminary certified the
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1 following Settlement Class for settlement purposes only:

2 all persons in the United States and its territories who either (a) purchased a new
3 Class Product, or (b) acquired a new Class Product as part of the purchase or
4 remodel of a home, or (c) received as a gift, from a donor meeting those
5 requirements, a new Class Product not used by the donor or by anyone else after
6 the donor purchased the Class Product and before the donor gave the Class
7 Product to the Settlement Class Member, during the Class Period.

8 Excluded from the Settlement Class were:

9 (i) officers, directors, and employees of Bosch or its parents, subsidiaries, or
10 affiliates, (ii) insurers of Settlement Class Members, (iii) subrogees or all entities
11 claiming to be subrogated to the rights of a Class Product purchaser, a Class
12 Product owner, or a Settlement Class Member, (iv) persons who acquired an
13 other-than-new Class Product, (v) issuers or providers of extended warranties or
14 service contracts for Class Products, and (vi) persons who timely and validly
15 exercise their right to be removed from the Settlement class.

16 **B. Certification of the Settlement Class Pursuant to Rule 23 of the Federal 17 Rules of Civil Procedure Is Appropriate and Warranted.**

18 In the Preliminary Approval Order the Court preliminarily found that the numerosity,
19 commonality, typicality, adequacy, predominance, and superiority requirements of Rule 23
20 of the Federal Rules of Civil Procedure were satisfied. Dkt. 23 ¶ 7. Since the Court's
21 Preliminary Approval Order, the deadline for opt-outs and objections have passed. Upon
22 review of the declarations of the notice and claims administrator, CPT Group, Inc. ("CPT")
23 and Settlement Class Counsel, no opt-outs or objections were made by Settlement Class
24 Members. Additionally, no material changes have occurred since that Order that would alter
25 this ruling. The Court now finally approves certification of the Settlement Class and the
26 Settlement Agreement.

27 **4. The Settlement Benefits.**

28 **A. The Settlement Fund**

The Settlement provides for the establishment of a Settlement Fund up to \$2,000,000.00
for reimbursement of out-of-pocket costs for the repair or replacement for a Display Failure,

1 Notice and Administration, Class Representative Awards of \$2,500, and Attorneys' Fees and
2 reimbursement of Costs of \$725,000, subject to Court approval.

3 Settlement Class Members fall into two distinct tiers with significant options for relief.
4 Any Settlement Class Member who provides sufficient documentary Proof of Ownership and
5 Proof of Display Failure are entitled to reimbursement for out-of-pocket costs and/or an
6 Extended Service Plan for repair of the Microwave/Ovens, as follows following:

7 ***Tier 1:***

- 8 a. Reimbursement of sufficiently documented out-of-pocket costs up to \$400.00 with
9 proof that such out of pocket costs related to the Past Display Failure (a display failure
10 that occurred prior to the Notice Date); and
11 b. An extended service plan benefit of three (3) years from the date of purchase, wherein
12 Bosch will replace any VFD control panel that experiences a Display Failure.

13 ***Tier 2:*** Class Members with a Future Display Failure (a display failure that occurs after
14 the Notice Date) are entitled to an extended service plan benefit of three (3) years from the
15 date of purchase, wherein Bosch will replace any VFD control panel that experiences a Display
16 Failure.

17 The Extended Service Plan for Tier 1(b) and Tier 2 Settlement Class Members may be
18 provided by Bosch through its existing warranty process, which will include either
19 replacement of the VFD control panel by Bosch or the cash value of the replacement parts and
20 labor, not to exceed \$250.00. To be eligible for compensation for a Future Display Failure, a
21 Settlement Class Member must submit a claim within 90 days of the Display Failure.

22 Additionally, the Settlement includes a benefit for consumers with expired extended
23 service plans. For purchases where the extended service plan benefit has expired prior to or on
24 the Effective Date, the Class Member would be entitled to 120 days from the Effective Date
25 to submit an Extended Service Claim.

26 **5. Notice.**

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1 Consistent with the Preliminary Approval Order and the proposed Notice Plan, the
2 Settlement Administrator, CPT, has notified Settlement Class Members of the Settlement by:
3 (a) emailing the notices to all members of the Settlement Class for whom valid email addresses
4 are known to Bosch; (b) mailing postcard notice to Settlement Class Members that did not
5 have valid email addresses but had valid postal information; (c) implementing a digital notice
6 program, including advertising both on social media and through Google and Bing; and (d)
7 publishing a press release in PR Newswire for dissemination. In addition, CPT created a
8 Settlement Website that includes all necessary and pertinent information for Settlement Class
9 Members to call and obtain additional information about the Settlement. The direct notice for
10 those with valid email addresses and postal addresses, following deduplication and additional
11 data analysis resulted in direct notice to 12,840 of the approximate 28,000 Settlement Class
12 Members (approximately 46%). The Notice Plan intended to reach 71% of the Settlement
13 Class, which CPT certifies was accomplished.

14 In the Preliminary Approval Order the Court the form and methods of notifying the
15 Settlement Class of the terms and conditions of the proposed Settlement Agreement met the
16 requirements of Fed. R. Civ. P. 23, any other applicable law, and due process, and constituted
17 the best notice practicable under the circumstances.

18 Further, CPT, on behalf of Defendant, caused timely notice of the Settlement and
19 related materials to be sent to the Attorney General of the United States and the Attorneys
20 General of all states and territories,. The Court finds that such notification complies fully with
21 the applicable requirements of the Class Action Fairness Act of 2005.

22 **6. The Settlement is Fair, Reasonable, and Adequate.**

23 “Rule 23(e) of the Federal Rules of Civil Procedure require court approval of all class
24 action settlements, which may be granted only after a fairness hearing and a determination that
25 the settlement taken as a whole is fair, reasonable, and adequate.” *In re Bluetooth Headset*
26 *Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (citing Fed. R. Civ. P. 23(e)(2)). Rule
27 23(e)(2) requires the Court to consider: (1) “whether plaintiffs and their counsel have
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adequately represented the class”; (2) “whether the proposed settlement was negotiated at arm’s length”; (3) “whether the relief provided for the class is adequate”; and (4) “whether the proposed settlement treats class members equitably relative to one another.” *Torres v. N. Pac. Seafoods, Inc.*, No. 2:20-cv-01545-JLR, 2021 WL 7366175, at *1 (W.D. Wash. Dec. 9, 2021); *see also* Fed. R. Civ. P. 23(e)(2)(A)-(D).

The Ninth Circuit has also outlined a number of considerations for determining if a proposed settlement is “fair, reasonable, and adequate” under Rule 23(e):

(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and view of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.

Hanson v. MGM Resorts Int’l, No. 16-cv-001661-RAJ, 2018 WL 3630284, at *5 (quoting *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015)); *see also Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). (“Churchill factors”).

A. The Settlement satisfies the Rule 23(e)(2) requirements.

Plaintiffs and Class Counsel have adequately represented the class under Rule 23(e)(2)(A). Settlement Class Counsel and Settlement Class Representatives have been zealous advocates on behalf of consumers who purchased the Microwave/Ovens as they have pursued this case since July 2020. The Court has already acknowledged as much in the Preliminary Approval Order when it stated “the Settlement Class Representatives and Settlement Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class and will continue to do so.” Dkt. 23 ¶ 7. This Court sees no reason to alter its previous finding and thus Rule 23(e)(2)(A) is satisfied.

The Settlement is the result of arm’s length negotiations under Rule 23(e)(2)(B). The Settlement in this action is the product of serious, informed, non-collusive negotiations. The Parties were fully aware of the strengths and weaknesses of each other’s positions as well as

1 their own. Only after significant pre-suit investigation, formal and informal discovery, and a
2 full day of mediation on November 29, 2022, and by working with Judge Andersen, a highly
3 respected and experienced mediator, were the Parties able to reach a settlement in principle.
4 The Parties took an additional year to negotiate the specific terms of the Settlement Agreement.
5 This Court previously noted as well that “the Settlement has been reached as a result of
6 intensive, arm’s-length negotiations using an experienced third-party neutral” and that based
7 upon “extensive and costly investigation, research, and discovery” that the “parties are
8 reasonably able to evaluate the benefits of settlement” and avoid collusion. Dkt. 23 ¶ 7. This
9 Court sees no reason to alter its previous finding and thus Rule 23(e)(2)(B) is satisfied.

10 ***The relief provided to the Class is adequate under Rule 23(e)(2)(C).*** The relief
11 provided to the Settlement Class in the Settlement plainly satisfies Rule 23(e)(2)(C). Through
12 the efforts of Settlement Class Counsel, all purchasers of the Microwave/Ovens in question
13 are entitled to benefits from the Settlement regardless of whether the Microwave/Ovens have
14 experienced the Display Failure. The Settlement provides two tiers of benefits in order to
15 capture consumers who purchased the Microwave/Ovens which have already manifested
16 Display Failures as well as those who purchased the Microwave/Ovens which have not yet
17 manifested Display Failures. The Settlement offers a monetary benefit to Settlement Class
18 Members for out-of-pocket costs. Additionally, and critically, the Extended Service Plan
19 provides a substantial benefit to the Settlement Class and addresses the crux of this litigation,
20 which is that Bosch failed to inform consumers at the time of purchase of the latent but
21 inevitable Display Failure in the Microwave/Ovens, and through this Settlement, and
22 Settlement Class Members would have a remedy available to them which addresses the latent
23 nature of the Display Failures. Moreover, absent reaching the Settlement, proceeding in this
24 case presented significant costs, risks, and almost certain delays for trial and appeal. The Court
25 has already recognized the potential risks and costs avoided by the Settlement in its
26 Preliminary Approval Order and sees no reason to depart from its earlier findings. *See* Dkt.
27 23 ¶ 7. The claims process is not unduly burdensome and instead ensures only Settlement
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1 Class Members benefit from the Settlement. Lastly, the proposed fee award is not
 2 disproportionate given the benefits for the Settlement Class and the circumstances as a whole.
 3 Therefore, Rule 23(e)(2)(C) is satisfied.

4 ***The Settlement treats Settlement Class Members equitably relative to each other***
 5 ***under Rule 23(e)(2)(D).*** The Settlement treats Settlement Class Members equitably by
 6 addressing the totality of the Settlement Class with the understanding that some Settlement
 7 Class Members have Microwave/Ovens with the Display Failure already manifested, some
 8 have paid out-of-pocket costs for repair, and others have not yet had Microwave/Ovens suffer
 9 from Display Failure. All Settlement Class Members are entitled to the Extended Service Plan
 10 for three years from the date of purchase of the Microwave/Oven, and Settlement Class
 11 Members who have previously come out-of-pocket to repair the Display Failure or come out-
 12 of-pocket in the future are made whole. Therefore, Rule 23(e)(2)(D) is satisfied.

13 ***B. The Settlement satisfies the Churchill factors.***

14 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and
 15 likely duration of further litigation; (3) the risk of maintaining class action status
 16 throughout the trial; (4) the amount offered in settlement; (5) the extent of
 17 discovery completed and the stage of the proceedings; (6) the experience and
 18 view of counsel; (7) the presence of a governmental participant; and (8) the
 19 reaction of the class members of the proposed settlement.

20 ***The presence of a governmental participant is inapposite.*** Although it is one of the
 21 *Churchill* factors, there is no governmental participant present in this case.

22 ***The strength of the Plaintiff's case weighs in favor final approval.*** Settlement Class
 23 Counsel firmly believes in the strength of Plaintiffs' case, and that judgment is based upon
 24 extensive class action experience generally, and product defect litigation specifically.
 25 Settlement Class Counsel used their experience to vigorously defend in litigation against
 26 Bosch's counsel, and then used to negotiate the Settlement, which is supportive of final
 27 approval.
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1 ***The risk, expense, complexity, and likely duration of further litigation weighs in favor***
2 ***of final approval.*** Absent reaching the Settlement, proceeding in this case presented
3 significant costs, risks, and almost certain delays for trial and appeal. The nature of this case
4 as a product defect class action presents unique risks. The efficiency of accomplishing this
5 Settlement only after prevailing at the dismissal stage is a testament to the high quality of this
6 Settlement and is an intangible benefit of the Settlement provided to Settlement Class
7 Members. Moreover, the Settlement provides prompt and certain relief for Settlement Class
8 Members, whereas continued litigation may have resulted in no benefits or, at best, delayed
9 benefits. The Court sees no reason to depart from its previous finding that “the Settlement has
10 been reached as a result of intensive, arm’s-length negotiations using an experienced third-
11 party neutral” and that based upon “extensive and costly investigation, research, and
12 discovery” that the “parties are reasonably able to evaluate the benefits of settlement.” Dkt.
13 23 ¶ 7.

14 ***The risk of maintaining class action status throughout the trial weighs in favor of***
15 ***final approval.*** Continuing with litigation would have required a battle of the experts related
16 to the Display Failure, including *Daubert* motions, a contested battle over class certification,
17 including the risk of decertification, summary judgment, trial, and a likely subsequent appeal,
18 which weighs in favor of final approval.

19 ***The amount offered in the settlement weighs in favor of final approval.*** The
20 Settlement creates a \$2,000,000 Fund that will reimburse Settlement Class Members for out-
21 of-pocket costs. In addition, the Extended Service Plan offers a benefit which adds to the
22 amount offered in the Settlement. The amount offered addresses the latent nature of the
23 Display Failure, which weighs in favor of final approval.

24 ***The extent of discovery completed and the stage of the proceedings weigh in favor of***
25 ***final approval.*** From the inception of the case, Settlement Class Counsel consulted with an
26 electrical expert to understand the Display Fade, and the expert’s investigation and analysis
27 informed how Settlement Class Representatives approached each stage of the case, from the
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1 construction of the complaints, their responses to motions to dismiss, and mediation. Because
2 of the nature of the Display Fade resulting from a design which was no longer the industry
3 norm, as well as because of Settlement Class Counsel's substantial efforts, Settlement Class
4 Counsel could make informed judgments for purposes of Settlement, and additional discovery
5 would provide little value in further assessing the merits of Plaintiffs' claims and defenses.
6 Sufficient discovery occurred leading up to and during mediation such that essential
7 information for purposes of crafting the Settlement were exchanged. Settlement Class
8 Counsel's depth of experience in class action litigation and product defect litigation bore
9 heavily here as well, as they were able to discern the strengths and weaknesses of this case
10 based on their own experience and accomplish an efficient resolution. Importantly, the Court
11 previously noted as well that "the Settlement has been reached as a result of intensive, arm's-
12 length negotiations using an experienced third-party neutral" and that based upon "extensive
13 and costly investigation, research, and discovery" that the "parties are reasonably able to
14 evaluate the benefits of settlement" and avoid collusion. Dkt. 23 ¶ 7. Thus, Rule 23(e)(2)(B)
15 is satisfied.

16 ***The experience and views of counsel weigh in favor of final approval.*** Settlement
17 Class Counsel have decades of class action litigation experience. Specifically, Settlement
18 Class Counsel have extensive experience handling product defect class action lawsuits, with
19 successful results and recoveries to class members across the country. Settlement Class
20 Counsel worked extensively with a consulting expert for months prior to filing the case as well
21 as during the litigation in order to understand the case's merits and shortfalls substantively.
22 Settlement Class Counsel appreciated the value of the case as well as the attendant risks of
23 further litigation, including the procedural risks inherent in product defect class actions,
24 weighed them, and based upon their experience, believed that the Settlement satisfies all
25 pertinent requirements under Rule 23. More than that, Settlement Class Counsel believed the
26 Settlement was an excellent result for the Settlement Class which provided significant benefits
27 to address Bosch's concealment of the latent Display Fade defect at the time of purchase.
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Settlement Class Counsel's judgment weighs in favor of final approval and is entitled to a presumption of reasonableness. *See Rinky Dink Inc.*, 2015 WL 11234156, at *5 ("The recommendation of Plaintiffs' counsel should be given a presumption of reasonableness." (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2008))).

The reaction of the class members to the Settlement weighs in favor of final approval.

Not a single Settlement Class Member, through the claims process or otherwise, has objected or opted out as of April 25, 2024, the deadline for doing so. "[T]he absence of a large number of objections to the proposed class action settlement raises a strong presumption that the terms . . . are favorable to the class members." *Fossett v. Brady Corp.*, No. ED CV 16-2572 PA (SPx), 2021 WL 2273723, at *9 (C.D. Cal. Mar. 23, 2021) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004)); *see also Baker v. SeaWorld Entm't, Inc.*, No. 14-CV-02129-MMA-AGS, 2020 WL 4260712, at *8 (S.D. Cal. July 24, 2020) ("The absence of many objectors supports the fairness, reasonableness, and adequacy of the settlement."). The lack of objections and opt-outs demonstrates the positive reaction of Settlement Class Members to the Settlement.

7. Final Approval.

For the reasons discussed above, the Court certifies the proposed Settlement Class and grants Plaintiffs' motion. The Court finds that the Settlement Class satisfies the requirements of Fed. R. Civ. P. 23(a) and 23(b), and that the Parties' Settlement Agreement is fair, reasonable, and adequate.

DATED this 13th day of June, 2024.



The Honorable Richard A. Jones
United States District Judge